

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**SOUTHERN OCEAN MEDICAL  
CENTER,  
JERSEY SHORE UNIVERSITY  
MEDICAL CENTER,  
PALISADES MEDICAL CENTER,  
AND THE HARBORAGE,  
A DIVISION OF HMM HOSPITALS  
CORP.,**

Respondent,

and

**HEALTH PROFESSIONALS AND  
ALLIED EMPLOYEES,**

Charging Party.

Case Nos.    22-CA-223734  
                    22-CA-223942

**RESPONDENTS' EXCEPTIONS TO  
THE ADMINISTRATIVE LAW JUDGE'S DECISION**

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The Harborage,  
A Division of HMM Hospitals Corp.*

On April 24, 2020, Administrative Law Judge Benjamin W. Green (“the ALJ”) issued a decision (“ALJD”) in the above-captioned case. Therein, the ALJ erroneously determined that Respondents<sup>1</sup> violated Sections 8(a)(5) and (1) of the National Labor Relations Act (“NLRA” or “Act”), 29 U.S.C. § 158(a)(1), (5), by “announcing its [sic] desire to change [the] terms and conditions of employment [of its team members] without providing advance notice and contract proposals to the bargaining representative of those employees, Health Professionals and Allied Employees (Union or HP AE).” HMH hereby submits the following Exceptions and brief in support thereof, pursuant to Section 102.46 of the National Labor Relations Board’s (“NLRB” or “Board”) Rules and Regulations. The Board should sustain these objections, reverse the ALJ’s finding of a violation of the Act and dismiss the Complaint.

1. HMH excepts to the ALJ’s Conclusion of Law No. 4, at 18:3-5, that: “The Respondents dealt directly with bargaining unit employees in violation of Section 8(a)(5) and (1) of the Act by announcing its desire to changes their terms and conditions of employment without providing the Union adequate advanced notice and bargaining proposals.” (*Passim*)

2. HMH excepts to the ALJ’s conclusion, at 1, that HMH violated the Act by “announcing its desire to change [the] terms and conditions of employment [of its team members] without providing advance notice and contract proposals to the bargaining representative of those employees, [HP AE].” (*Passim*)

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<sup>1</sup> Southern Ocean Medical Center (“SOMC”), Jersey Shore University Medical Center (“JSUMC”) and Palisades Medical Center (“PMC”) are acute care hospitals affiliated with Hackensack Meridian Health (“HMH”). The Harborage is a long-term care facility, adjacent to PMC and affiliated with HMH. Unless required by context to be identified separately, Respondents are collectively referred to as “HMH.” HMH refers to its employees as “team members” and that term will be used herein.

3. HMM excepts to the ALJ's failure to find, at 3:21-28, that it expected "the vast majority of its harmonization plan to go into effect on January 1, 2019" for its non-bargained employees only. (Tr. 214:16-215:1, 237:9-238:13, GC-6, 7, 8)

4. HMM excepts to the ALJ's failure to find, at 4:14-41, 5:6-11, 5:30-8:43 and 15:38-17:1, that the disclaimers included on HMM's harmonization materials constituted an appropriate and effective disclaimer regarding the harmonization materials HMM published to all of its team members on May 22. (Tr. 42:25-43:9, 224:13-227:1, 230:2-231:11, 235:12-236:1, 246:4-245:5, GC-6, 8, 26, R-9)

5. HMM excepts to the ALJ's failure to find, at 8:45-9:20, that HPAE's Facebook post to its members on May 22 at 9:15 a.m. demonstrated that the Union had received appropriate notice of, and disclaimer regarding, the harmonization materials HMM intended to publish to all of its team members on May 22. (R-1, Tr. 56:4-57:12)

6. HMM excepts to the ALJ's failure to cite and apply the Board's established law in direct dealing cases, requiring the General Counsel to prove that: (1) the employer was communicating directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication was made to the exclusion of the union. *Permanente Medical Group*, 332 NLRB 1143, 1144 (2000) (citing *Southern California Gas Co.*, 316 NLRB 979 (1995)). (*Passim*)

7. HMM excepts to the ALJ's failure to conclude that HMM's harmonization communications to all of its team members (a) were not for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role

in bargaining; and (b) such communication were not made to the exclusion of the Union. (Tr. 42:25-43:9, 136:18-141:13, 153:8-23, 183:15-18, GC-8, 26)

8. HMH excepts to the ALJ's erroneous reliance, at 14:7-8; 15:23-24, on *Detroit Edison*, 310 NLRB 564 (1993), and his erroneous conclusion that it controlled to result in this case. (*Passim*)

9. HMH excepts to the ALJ's failure to conclude, at 14, n.11, that HMH's harmonization communications to all of its team members (including its HPAE represented employees) were protected by Section 8(c) of the Act, 29 U.S.C. § 158(c). (*Passim*)

10. HMH excepts to the ALJ's misstatement of the Board's established direct dealing law, at 12:11-14, that such a violation may be found where "[a]n employer . . . reveal[s] to unit employees its intention to alter their wages, hours, and other terms and conditions of employment without giving the union adequate advance notice to discuss the prospective changes with employees or engage in meaningful bargaining." (*Passim*)

11. HMH excepts to the ALJ's failure to apply holding of the Fourth Circuit in *Overnite Transportation Co. v. NLRB*, 280 F.3d 417, 432-433 (4th Cir. 2002) and *Americare Pine Lodge Nursing & Rehab. Ctr. v. NLRB*, 164 F.3d 867, 876-77 (4th Cir. 1999) that there is no rule requiring an employer to delay informing its union-represented employees of a proposal until the union has some period of time to consider it in evaluating whether HMH engaged in direct dealing.

12. HMH excepts to the ALJ's conclusion, at 15:35-36, that it "failed to prove that it effectively communicated such a disclaimer to unit employees." (R-1, Tr. 64:13-18, 86:5-8, 88:21-89:2)

13. HMH excepts to the ALJ's conclusion, at 16:5-12, that "it failed to establish that [its] disclaimer effectively rebuts the General Counsel's prima facie case." (R-1, 9, Tr. 64:13-18, 86:5-8, 88:21-89:2, 140:24-141:17.236:24-239:2)

14. HMH excepts to the ALJ's conclusion, at 17:4-5, that it "also failed to establish that its near simultaneous presentation of the Growing Together harmonization plan to employees was the result of some exigent need." (R-5, 6, Tr. 215:2-21)

15. HMH excepts to the ALJ's reliance, at 17:6-12, on *RBE Electronics*, 320 NLRB 80 (1995), a decision "regarding exigencies that allow an employer to expedite bargaining and make certain unilateral changes in advance of overall contractual impasse."

16. HMH excepts to the ALJ's conclusion, at 17:16-25, 28-35, that it did not establish that it "was unable to present harmonization proposals to the Union earlier than it did," or "that time was of the essence." (R-5, 6, Tr. 215:2-21)

17. HMH excepts to the ALJ's conclusion, at 17:20-25, that it "could [ ] have notified, consulted, and made proposals to the Union on a rolling basis, perhaps with some agreement as to confidentiality." (*Passim*)

18. HMH excepts to the ALJ's conclusion, at 6, n.6, 7, n.7, 16:39-40, that R-9 should have been excluded from evidence based on the best evidence rule. (R-9, Tr. 234:9-236:21)

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Respectfully submitted,

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